

Improving Scotland's Social Security System: Enhanced Administration and Compensation Recovery

Citizens Advice Scotland consultation response – October 2022

Scotland's Citizens Advice Network is an essential community service that empowers people through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

There are 59 Citizens Advice Bureaux across Scotland providing advice, support and advocacy free to everyone who needs it.

In the last year the CAB network has supported 174,000 people and around 2.4 million people used our online advice service. We unlocked £132million for people over that same year and recent analysis has shown that for every £1 invested in core advice, £12 is released into the community.

CAS welcomes this consultation, an opportunity to influence the future of social security support and its administration in Scotland.

Throughout our response, we have included "Citizens Alerts" which are real case examples provided by the network of Citizens Advice Bureaux throughout Scotland.

Citizens Advice Scotland is calling for:

- Greater flexibility in the development of Scottish Child Payment to open avenues toward filling gaps in the current social safety net.
- A simplified process for challenging social security decisions that encourages claimants to exercise their rights and reduces the burden of doing so.
- A fair approach to the recovery of overpayments that recognises the complexity of the contexts in which overpayments occur.

Response to Consultation

1. **Do you agree or disagree that it would be useful to be able to make changes to Scottish Child Payment that were not limited by the current approach that relies on 'top-up' powers?**

Agree

2. **Give reasons for your answer**

CAS appreciates that s79 of the Social Security (Scotland) Act 2018, which allows the top-up of a qualifying reserved benefit, performs a specific function which may limit its utility in meeting the needs of Scottish claimants. Any proposed changes to Scottish Child Payment must be led by the evidence gathered as part of ongoing

performance reviews of Social Security Scotland alongside input from stakeholders and those with lived experience of the benefit system.

3. Please give your views on the advantages that could arise from creating this additional flexibility.

CAS agrees that being able to react to potential changes to reserved benefits will be important in ensuring that the Scottish Social Security effectively meets the needs of Scotland's population. Flexibility in the design and delivery of Scottish Child Payment could enable a closer alignment with other forms of Social Security Scotland assistance, such as Best Start Grant, potentially streamlining access to benefits, permitting a more seamless system of support and easing evidence provision processes. Such flexibility could enable Social Security Scotland to, for example, target support to those most in need. Criteria could be developed based upon need, so that those who are ineligible for qualifying benefits, such as those without access to public funds and those with pre-settled status, are supported.

Citizens Alert: A West of Scotland CAB reports of a client who is a young mother (under twenty-five) living with her 2-month-old child. She started working part-time for the NHS in March 2021. She was not entitled to Statutory Maternity Pay, and was advised to claim Maternity Allowance, which as a benefit was deducted in its entirety from her Universal Credit entitlement. Had the MA been treated as earnings, with a work allowance, client would have been entitled to £585 more UC per month.

Citizens Alert: A Central Scotland CAB reports of a client who needed help with the cost of formula and nappies for the baby. Client was advised to speak to her Health Visitor directly in first instance and signposted to local food and baby bank. The Bureau sourced supermarket vouchers for clients, which were posted directly to client and a text message notification confirming this was also issued. The advisor observed a significant increase in families with NRTPF and low-income families generally who are unable to afford essential items required to care for a baby and noted the limited help that the Bureau was able to provide in such cases.

Citizens Alert: A Central Scotland CAB reports of a client who sought advice on eligibility for benefit. Client was no longer receiving UC as, having applied for Maternity Allowance (MA), which was awarded and backdated, her income is higher than UC standard allowance and child element. Client's SCP will cease since she is no longer in receipt of qualifying benefit. MA paid at £156 a week and client does not have housing costs as she lives with her mother.

4. Please give your views on the disadvantages that could arise from creating this additional flexibility.

The main disadvantage could be disruption to those currently in receipt of SCP if their awards require to be re-assessed, though CAS does not foresee this being necessary. Any change to SCP may create confusion around eligibility criteria which

could negatively impact on take up of the benefit. In addition, the introduction of Scottish Child Payment on a fresh legislative basis could place additional administrative pressure and strain on Social Security Scotland. Adequate preparation and resourcing will be required prior to any changes being introduced.

5. Do you agree or disagree that a client should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision?

Agree

6. Please give reasons for your answer

CAS believes that a client's right to decide should be enshrined at every stage of the claims process. This involves facilitating claimants to explore their options at any point in the claim journey. Claimants must be supported to exercise an informed choice. To ensure that this proposal does not result in claimants withdrawing a re-determination request without full consideration of the advantages and disadvantages of doing so, it is of vital importance that the implications of each course of action are clearly communicated. Communication and messaging around this proposal must be collaboratively designed with representative groups of claimants and relevant stakeholders.

7. Do you agree or disagree that a new determination should only be made if it gives the client everything they could get from the Tribunal?

Disagree

8. Please give reasons for your answer

This proposal would appear to restrict the range of responses open to Social Security Scotland in the event of an appeal being raised. It could also result in Social Security Scotland making a determination that would in effect be pre-empting the outcome of a Tribunal hearing. CAS believes that the client's right to decide should be enshrined at every stage of the process. A claimant must be entitled to make an informed choice to accept a re-determination proposal, even if this proposal does not represent the maximum possible award that could be made following a Tribunal hearing. There are a range of outcomes available to a Social Security Tribunal shaped by the regulatory regime surrounding the social security question before it. Access to independent advice to clearly communicate these various possible outcomes, and to support the presentation of the best possible case to achieve a claimant's preferred outcome, is of vital importance.

Data published by the Department for Work and Pensions confirms that across the financial year 2020-2021 35% of PIP appeals lodged became lapsed ([Personal Independence Payment: Official Statistics to July 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/personal-independence-payment-official-statistics-to-july-2022)), meaning that the Department superseded the decision under challenge with a

decision that that is in the claimant's favour. Not all these decisions will have represented the maximum award that a Tribunal is empowered to order. Lapsing an appeal in this way does prevent the matter from having to proceed to a Tribunal hearing, which may be desirable to both parties. Importantly, disposing of an appeal in this way does not prevent a claimant from later making an application for a review of their award if they feel that it no longer reflects their needs.

This proposal is an opportunity to consider if it is necessary to require claimants to request a re-determination to access the appeal system. Combined with the ability to offer a re-determination prior to an appeal hearing, eliminating the re-determination step for claimants could facilitate access to justice. As a result, claimants will only have to go through one process to challenge a decision, reducing delays and improving efficiency.

If clearly communicated to claimants, the flexibility to propose a re-determination may encourage claimants to exercise their appeal rights safe in the knowledge that it is not inevitable that they will require to present at a Tribunal hearing.

The following accounts by CAB advisors provide a clear insight into the barriers faced by claimants in exercising their appeal rights:

Citizens Alert: A Central Scotland CAB reports of a client so traumatised about the thought of going to appeal that they withdrew the case. The client had read through some of the appeal papers and was upset about how the DWP portrayed her. Client was advised to attend at her GP practice and obtain up to date information about her current conditions and make a fresh claim.

Citizens Alert: A Central Scotland CAB Reports of a client suffering from several health conditions including a learning disability and long-standing mental ill health who is heavily reliant on her parents' support. Stress increases her mental ill-health (and the associated self-harming behaviour and self-neglect). Client's parents undertake many activities on her behalf. A claim for PIP has been refused on application and upon MR request. Despite client's mother's knowledge of how well the client meets the criteria for some award of PIP, client's mother thinks that the process of undertaking any further challenge to the PIP decision (even with maximum support from CAB) will cause stress to the client and a deterioration in her health. For this reason, the client will not pursue an appeal.

Citizens Alert: A North of Scotland CAB reports of a client who explained that an unexpected call was received from the DWP offering a settlement prior to an appeal hearing. The client reported being told that a decision had to be made within the same day. The client was unable to reach her CAB advisor, who was on annual leave, and accepted the offer. The client informed the DWP of a preference to wait for advice but was told that the offer was a one-time offer and a decision needed to be made. Client reports feeling pressured and was not told of the right of appeal against the revised decision.

Decisions made prior to an appeal being heard frequently confirm that the outcome sought by the claimant from a Tribunal corresponds to entitlement. The accounts below illustrate the point:

Citizens Alert: A North of Scotland CAB Reports of a client awarded zero points at PIP application and again at Mandatory Reconsideration stage. At appeal the client was awarded Daily Living at the standard rate and Mobility also at the standard rate.

Citizens Alert: A Central Scotland CAB reports of a client was awarded zero points following a Universal Credit Work Capability Assessment and had to lodge a Mandatory Reconsideration and subsequently an appeal. The Tribunal awarded thirty points via schedule 6 of the Universal Credit Regulations 2013 and another thirty points via schedule 7, placing the client in the Limited Capability for Work Related Activity group.

9. Do you agree or disagree that a client should be asked for their consent before a new determination is made?

Agree

10. Please give reasons for your answer

A requirement to obtain informed consent to a re-determination decision proposed after an appeal has been lodged is vital. It preserves the dignity of claimants and helps build and maintain a relationship of trust between Social Security Scotland and claimants.

The following account illustrates the role of appropriate communication, access to independent advice and informed consent in the process:

Citizens Alert: A North of Scotland CAB reports of a client who was contacted by the DWP while an appeal process was ongoing and accepted the award offered. The CAB advisor explained that the client was not afforded an opportunity to consider the offer and to seek advice although medical evidence had been provided detailing learning difficulties associated with challenges in processing information, especially by telephone. The CAB advisor, the named representative on the appeal documents, was not made aware of the offer, and was not therefore able to explore the client's options with him. The CAB advisor explained that, due to anxiety, the client is not prepared to engage in any further process.

11. Please provide your views on what challenge rights the client should have on the new determination.

If a re-determination is proposed a claimant must be enabled to refuse consent to the new determination and proceed to appeal. Similarly, claimants must be provided with a right to appeal the new determination.

12. Do you agree or disagree that Social Security Scotland should be able to make payments to a DWP appointee until it completes its appointee process?

Agree

13. Please give reasons for your answer

CAS agrees that there are circumstances in which a DWP managed appointee arrangement should be maintained to prevent or minimise any break in payments. These circumstances include applications made under the Special Rules, applications for one off support payments for specific purposes, and applications by those moving from another part of the UK for an equivalent devolved benefit. This proposal does present a risk of financial abuse considering the divergence in the DWP and SSS procedure, therefore we consider that an appropriate measure to reduce this risk would be to invite the claimant and their appointee to an appointment, either remote or in person as appropriate, with a local delivery team during the transition phase. Given the short-term nature of the arrangement, on balance the risk of delays to payments if this measure is not introduced is greater than the risk that an appointee may be subsequently found not to be appropriate for the role.

14. Do you agree or disagree that the Scottish Government should introduce rights of challenge against Social Security Scotland's decision that someone is liable to repay an overpayment?

Agree

15. Please give reasons for your answer

This proposal is consistent with the stated aims of Social Security Scotland in respect of how overpayments are managed. It is in the interests of fairness and access to justice and simplifies the system by removing a specific exception. The proposal is likely to reduce the number of cases being referred to the Sheriff Court, since claimants will no longer require to defend Sheriff Court actions in order to challenge liability.

16. Please provide your views on the most appropriate way to hear challenges against Social Security's decisions that someone is liable to repay an overpayment, bearing in mind that the aim is to avoid clients having to go to court.

Such challenges are most appropriately heard via an application for a re-determination and thereafter referral to the First Tier Tribunal following an application to appeal. This is consistent with the process in relation to other decisions made by Social Security Scotland about overpayments.

17. Do you agree or disagree in principle that the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party is liable?

Agree

18. Please provide reasons for your answer

CAS appreciates that this proposal will be readily understood since it mirrors the arrangements in place for reserved benefit, and that it reflects the efficiency and value for money principles enshrined in the Social Security (Scotland) Act 2018. However, while they overlap considerably, social security support for disability related costs and compensation to reflect the impact of fault or negligence can be said to be performing subtly different functions. A typical illustrative example is that of the innocent party in a road traffic accident who is compensated for the driver's negligence to the extent of specified immediate medical outlays and a restricted sum for loss of earnings, but who faces daily ongoing costs associated with their new situation. CAS supports further policy development in this area in the future to work toward a fairer balance; this might be achieved through consultation with stakeholders including the insurance industry.

19. Do you agree or disagree that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally

Agree

20. Please give reasons for your answer

The trajectories behind instances of benefit fraud are complex and can reflect a lack of clear understanding of disclosure obligations, and intense socioeconomic pressure; this is particularly likely to be the case where small amounts of money are involved. The most recent DWP data for the financial year 2021-2022 show that 4.0% of total benefit expenditure was overpaid due to fraud and error, the net government loss, after recoveries, was £7.6 billion, or 3.5% of benefit expenditure ([Fraud and error in the benefit system: financial year 2021 to 2022 estimates - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/fraud-and-error-in-the-benefit-system-financial-year-2021-to-2022-estimates)). It would be reasonable to expect a similar, modest, scale of fraud in relation to Social Security Scotland delivered benefit.

21. If you agree, please describe what alternatives to prosecution you consider might be appropriate where small sums of money have been obtained illegally?

CAS observes that the efficiency principle indicates that the use of ordinary recovery procedure as provided for in sections 63-70 of the Social Security (Scotland) Act 2018 is the appropriate disposal of such cases.

22. Do you agree or disagree that third parties, such as appointees, should be included within the scope of statutory liability for overpayments in the way described above?

Agree

23. Please provide reasons for your answer

CAS agrees in principle with the intention of this proposal that Social Security Scotland should seek repayment from the person who benefited from the overpayment. The primary aim of this proposal must be the protection of claimants from financial abuse. It is vital that the approach taken to claimants in respect of overpayments is replicated in relation to those acting on their behalf. The aim must be to protect claimants from the consequences of acts of bad faith on the part of individuals acting on their behalf. Effective communication to be included in the guidance available and delivered during the appointee application process will be vital to prevent the proposal from having a deterrent effect.

24. To what extent do you think the current arrangements for the provision of independent scrutiny and advice work effectively?

Partially

25. Please give reasons for your answer

CAS observes that the statutory body, the Scottish Commission on Social Security (SCoSS), and the Disability and Carers Benefit Expert Advisory Group (DACBEAG) have distinct roles that are of equal importance in the effective operating of, and accountability of, Social Security Scotland. Full observations follow in the answers provided to questions 27, 28 and 30.

26. If the current arrangements were changed, would it be right to:

- (a) maintain separation between independent scrutiny and advice**
- (b) combine these functions to maximise the effective use of independent expertise and secretariat resources**
- (c) take a completely different approach**

27. Please give reasons for your answer

CAS emphasises that if the current arrangements are changed, mechanisms for seeking the advice of external experts and those with lived experience on a continuous consultation basis must be maintained. Equally, independent scrutiny of legislative proposals and social security operation by an independent, dedicated body with a statutory basis is essential. These are distinct functions. Currently, the Disability and Carers Benefit Expert Advisory Group (DACBEAG) has a remit to provide recommendations and advice to Scottish Ministers, by request and

proactively, on the policy options being developed on disability and carers' benefits. This will include options for currently reserved benefits when powers over them are transferred to the Scottish Parliament. Challenging advice of this type to inform, influence and improve policy development will benefit Social Security Scotland. The role of the Scottish Commission on Social Security (SCoSS) by contrast is to provide expert scrutiny of specific legislative proposals, to monitor and report upon the extent to which Social Security Scotland is meeting the expectations set out in Scottish social security law and acting in compliance with the relevant provisions of international human rights law. If these functions are to be merged into a single body, to ensure that there is no conflict of interest carefully drafted terms of reference subject to appropriate channels of scrutiny would be required.

28. There are different options for organising independent advice and scrutiny e.g. formal arrangements in the form of a statutory body like a non-departmental public body and paid board members, or informal arrangements at Ministerial invitation with members participating on a voluntary basis. Please describe your views on how independent advice and scrutiny should be organised in the future.

CAS believes that independent scrutiny is best delivered via an independent, dedicated body with a statutory basis. In respect of recommendations and advice CAS is aware of concerns raised by the Disability and Carers Benefit Expert Advisory Group (DACBEAG) that capacity to devote time to the Group may be particularly limited for some members and that the Secretariat is under resourced ([Disability and Carers Benefits Expert Advisory Group \(DACBEAG\) - Review \(www.gov.scot\)](http://www.gov.scot)). Informal arrangements have the advantage of members bringing the insight that their ongoing work with their organisation provides and attracting those wishing to contribute their expertise. More formal arrangements can be better at ensuring that the participants have both the resources and time to deliver effectively. Any solution should emphasise the communication of long-term policy options, giving those delivering this function a more proactive role and a wider sense of the range of ongoing and planned actions within the Scottish Government. Such communication would enable a strategic focus on issues where the advice of independent experts could really add value.

29. Do you agree or disagree that the public body or bodies providing the Scottish Government with independent scrutiny and advice of Scottish Social Security should also provide advice in the future on Employment Injury Assistance?

Agree

30. Please give reasons for your answer

CAS supports in principle an arrangement whereby the public body or bodies providing independent advice and scrutiny to the Scottish Government should

include all areas of devolved social security provision which will include Employment Injury Assistance. This will facilitate a system of independent scrutiny that is consistent, efficient, and clear about its remit.

31. Do you agree or disagree that requests for a re-determination should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is COVID-19?

Agree

32. Please give reasons for your answer

CAS agrees that re-determination requests should not be accepted if they are more than one year late, and the **primary** reason provided for the delay is Covid-19. CAS qualifies this agreement by observing that Covid-19 has had a deep and lasting impact on Scotland's population, disproportionately so on those with the protected characteristic of disability. Those with health profiles that required them to shield during the pandemic, and those with mental health and/or learning difficulties, in many instances remain more isolated and potentially less able to access advice than was the case prior to the pandemic. Therefore, it is vital that flexibility is afforded to claimants in particular circumstances such as these, with an ability to exercise discretion provided to decision makers.

33. Do you agree or disagree that applications for an appeal should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is related to COVID-19?

Agree

34. Please give reasons for your answer

CAS takes the same position as laid out in the answer to qu.32.

35. Do you agree or disagree that applications for assistance to Social Security Scotland should no longer be able to be treated as made on time where they are made late and the reason for that delay is related to COVID-19?

Agree

36. Please give reasons for your answer

CAS takes the same position as laid out in the answer to qu.32.

37. Do you agree or disagree that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19?

Agree

38. Please give reasons for your answer

CAS strongly agrees that claimants must have the ability to apply late where they, or an advocate or representative on their behalf, provides a reasonable explanation. Claimants who struggle to engage with the application process for a variety of reasons will be denied payment in arrears if they require to make fresh applications due to missing a deadline, reducing the ability of the system to tackle poverty and advance equality. Difficulty in engaging and with the application process and gathering evidence particularly affects those with mental health conditions and those who continue of necessity to live in an isolated fashion since the pandemic. It must be appreciated that Social Security Scotland is a new institution, adaptation to its processes will take time to develop, increasing the potential for delayed responses.

39. Do you have any information you wish to share on the impact of the proposals on groups who share protected characteristics? Please provide details, making reference to the specific proposal or proposals to which your comments relate.

CAS observes that a communications strategy designed to meet the needs of those with protected characteristics is of vital importance to ensuring that these proposals do not discriminate and have a positive impact on inclusion. Communication must be accessible to individuals who have a sensory, physical or mental disability, and must be available in translated form in all languages used by Scotland's population.

40. Do you have any information you wish to share on the impact of the proposals on Island communities?

N/A

41. Do you have any information you wish to share on the impact of the proposals on reducing inequality caused by socio-economic disadvantage?

In 2021-2022, 58% of clients supported by the CAB network were female, and 58% reported having a disability. Benefits advice represented 46% of the work undertaken by the network in that same period. Appreciating the disproportionate impact of how the social security safety net functions on women and those with a disability is of particular importance in reducing socio-economic disadvantage.

42. Do you have any information you wish to share on the impact of the proposals on children's rights and wellbeing?

CAS believes that the areas discussed in the course of this consultation have the potential to advance the commitments made in the Bright Start, Bright Futures:

Tackling Child Poverty Delivery Plan, including in addressing challenges that areas of long ingrained poverty become trapped in, making it easier to access the support available, and exploring systems of automated payment for devolved social security benefits to maximise take-up.

43. Do you have any information you wish to share on the impact of the proposals on businesses or organisations in the public, private or third sector?

At 46% of the advice work undertaken by the CAB network in 2021-2022, benefits advice continues to be the most sought-after support that it provides. Any changes to the social security system in Scotland, including in its administration, will have a disproportionate impact on organisations providing advice services and will place additional resource requirements on them.